UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF ALABAMA

OFFICE OF THE CLERK

POST OFFICE BOX 711

MONTGOMERY, ALABAMA 36101-0711

DEBRA P. HACKETT, CLERK

ELEPHONE (334) 954-3600

August 27, 2008

NOTICE OF CORRECTION

FROM: Clerk's Office

Case Style: Stokes v. The City of Montgomery et al

Case No.: 2:07cv686-WHA
Document 39, Exhibit 23

This Notice of Correction was filed in the referenced case this date to enter the corrected pdf for Exhibit 23 to Document 39. A copy of the corrected Exhibit 23 is attached to this Notice of Correction and Document 39, Exhibit 23 has been corrected.

EXHIBIT 23

MEMORANDUM

TO: Arthur D. Baylor, Chief
Police Department

FROM: Michael Briddell
Executive Assistant to the Mayor

DATE: February 15, 2007

SUBJ: SUSPENSION OF POLICE CORPORAL [redacted] D[redacted]

It is the Mayor's decision to suspend Police Corporal [redacted] D[redacted] for thirty (30) working days. During this time, Corporal D[redacted] is to undergo EAP counseling for anger management. At the conclusion of the suspension, an EAP professional will determine if Corporal D[redacted] is fit to return to duty. Upon receiving clearance, Corporal D[redacted] will resume duty and his pay will resume. Please prepare the necessary personnel forms and forward them to my office for approval.

Further insure that all the City personnel rules are followed.

APPROVED:

Bobby N. Bright
Mayor

MSB/wsf

MEMORANDUM

TO : Chief Arthur D. Baylor

FROM : Major B. M. Mitchell BMM

DATE : January 10, 2007

SUBJECT : Trial Review Board

The Trial Board met on Friday, January 10, 2007 at 0930 hours to hear the charges and specifications as follows on Corporal [redacted] D[redacted]:

Charge I. Duty in the Use of Force

Charge II. Duties of Responsible Employment; Engaging in any activity which may reflect negatively on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the department

Charges I & II were sustained.

The Board recommends that Corporal D[redacted] be terminated from the Montgomery Police Department. The vote was unanimous.

January 3, 2007

Memorandum

To: Chief A. D. Baylor

From: Major Kevin J. Murphy

Subject: Request Hearing Before the Departmental Review Board, Friday, January 12, 2007 at 0930 Hours for Corporal [redacted] D[redacted]

The below charges and specifications as outlined in regards to violation of Departmental Policy on the part of the above named employee are as follows:

Charge I: Violation of Article II, Section 2.180 of the Manual of Rules and Regulations governing members and employees of the Montgomery Police Department which reads as follows:

Duty in the Use of Force

A member may use only that force necessary to effect an arrest or otherwise accomplish an assigned task lawfully. Each member is specifically charged with knowing and remaining competent in the law of the State with regards to when and how force may be used.

Force that an officer uses to gain control over a subject is divided into the following categories:

Officer/Prisoner-Verbal Direction
Empty Hand Control
Oleoresin Capsicum Aerosol Restraint
Electronic Incapacitation Devises
Intermediate Force
Lethal Weapons

Specification I: On Saturday, July 8, 2006, at 0619 Hours, Corporal D[redacted] arrested [redacted] for giving a false name to a law enforcement officer. An altercation ensued between [redacted] and four officers. After R[redacted] was handcuffed, Corporal D[redacted] struck him in the face with his fist.

Officer G[redacted], who was present on the scene, gave a statement to the Internal Affairs Bureau on July 11, 2006, at 1424 Hours. On page 9, line 1 of his statement he reported:

"Ah, at some point Corporal D[redacted] hit him in the face with his fist".

Page 9, line 12 of Officer G[redacted]'s statement:

"Ah, ah that's when Corporal D[redacted] took a swing at him and hit him".

Page 10, line 24 of Officer G[redacted]'s statement:

"...ah, Corporal D[redacted] hit him in the side of his neck with his baton".

Page 13, line 7:

"That's when he punched him he kind of, that's when he, he stopped resisting. Ah, and that, I, it, when it happened I thought he just hit him in the stomach, try to get him in the car ah, but when I came up and smelled the mace, then that's when, when he, you could see him you know, you know, gotta inhale".

Corporal [redacted] C[redacted], who was present on the scene, gave a statement to the Internal Affairs Bureau on July 13, 2006, at 0834 Hours. On page 9, line 20 of his statement he reported:

"Ah, as soon as he's handcuffed, we all stand up and back off of him and he sits up. And that's when Corporal D[redacted] punched him on the, just kind of slapped him with his fist on the left, on the right side of his head with his left hand. And then he hit him on the left side of his neck with the baton in his right hand".

Page 10, line 7:

Q: How many times did Corporal D[redacted] hit him after he was seated and in handcuffs?
A: Just the one time on the head. And the second time with the baton.

Officer [redacted] W[redacted], who was present on the scene, gave a statement to the Internal Affairs Bureau on July 8, 2006, at 1251 Hours. On page 7, line 4 of his statement he reported that after [redacted] R[redacted] was handcuffed:

"He [D[redacted]] struck him in the be the left side of the neck area with his baton".

Page 7, line 22:

"...Corporal D[redacted] just slapped him twice in the face".

Page 8, line 21:

"...he's choking the guy out. And the guy's like gasping".

Corporal D[redacted] used unnecessary force on [redacted] R[redacted] after he was handcuffed.

Charge II: Violation of Article I, Section 1.330 of the Manual of Rules and Regulations governing members and employees of the Montgomery Police Department which reads as follows:

Duties of Responsible Employment

Every member and employee is obligated to faithfully discharge his employment for so long as he is employed with the department. This responsibility includes but is not limited to:

***

In addition to the requirements of responsible employment, there are prohibitions that are necessary to the maintenance of public confidence and trust. These prohibitions include but are not limited to:

Engaging in any activity which may reflect negatively on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the department.

Specification I: Corporal D[redacted] conduct and actions in the aforementioned arrest reflect negatively on the reputation of the Montgomery Police Department. Furthermore, Corporal D[redacted] failed to specify in his court affidavit or his initial departmental documentation of the specific force that he used on [redacted] R[redacted]. By not properly documenting the use of force, Corporal D[redacted] integrity is impeachable by members of the police department, components of the judicial system, and the citizens of the City of Montgomery.